

HAWAII CIVIL RIGHTS COMMISSION
888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813
Telephone: 586-8636

John Ishihara 1456-0
Attorney for Appellee

THIRD CIRCUIT COURT
STATE OF HAWAII
FILED

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STACEY ENOKA
CLERK

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

MASAMI "SPARKY" NIIMI,
Appellant,

vs.

HAWAII CIVIL RIGHTS
COMMISSION,

Appellee,

) CIVIL NO. 93-88
) (Hilo)

) Agency Appeal

) FINAL ORDER AFFIRMING
) AGENCY DECISION

FINAL ORDER AFFIRMING AGENCY DECISION

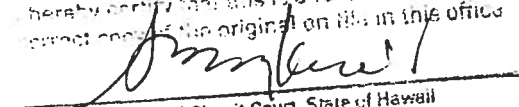
Oral argument on the briefs was held on January 7, 1994, 1:30 p.m., before the Honorable Riki M. Amano. Glenn Hara, Esq., represented Appellant Masami "Sparky" Niimi, and John Ishihara, Esq., represented Appellee Hawaii Civil Rights Commission.

Having read the briefs and heard the argument of counsel, THE COURT HEREBY FINDS THAT the Hawaii Civil Rights Commission's Findings of Fact are supported by the record under a de novo standard of review and HEREBY ADOPTS THE FINDINGS OF FACT.

Based upon the Findings of Fact, THE COURT HEREBY CONCLUDES AS A MATTER OF LAW THAT:

1) Complainant Dolores R. Santos filed a verified complaint against Hawaiian Flower Exports, Inc. with the Department

I hereby certify that this is a full, true and
correct copy of the original on file in this office


Clerk, Third Circuit Court, State of Hawaii

of Labor and Industrial Relations within 180 days of the sexual harassment, and the Hawaii Civil Rights Commission properly assumed jurisdiction over the complaint;

2) The Hawaii Civil Rights Commission had the authority to conduct an administrative hearing and make a final decision on the complaint;

3) Appellant Masami "Sparky" Niimi was an agent of Hawaii Flower Exports, Inc., and can be held personally liable for his discriminatory conduct;

4) The Commission was authorized by H.R.S. § 368-3(2) to delegate to the Executive Director its power to determine the failure of conciliation efforts, and properly made such delegation;

5) The complaint was docketed for administrative hearing within the time frame established by the Commission's rules, Hawaii Administrative Rules ("H.A.R.") § 12-46-18, after the Executive Director determined that conciliation failed;

6) Appellant did not raise three procedural errors at the administrative hearing, the 180 day period to investigate and determine reasonable cause (Point of Error No. 4), the 180 day period to issue a conciliation demand (Point of Error No. 5), and the Executive Director's press release (Point of Error No. 8), and has waived them;

7) In determining whether there is sexual harassment, the Court must "look at record as a whole and the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred," H.A.R. § 12-46-

109(b), and view the conduct from the perspective of a reasonable person of the same gender as the victim;

8) Based upon the Findings of Fact, Appellant Masami "Sparky" Niimi's conduct towards Dolores M. Santos consisted of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual forms of harassment of a sexual nature and such conduct had the purpose and effect of unreasonably interfering with Ms. Santos' work performance or created an intimidating, hostile, or offensive work environment, and thus constituted sexual harassment;

9) Appellant Masami "Sparky" Niimi's conduct violated H.R.S. § 378-2(1)(A) and H.A.R. § 12-46-109(a);

10) ~~As a consequence of Appellant Masami "Sparky"~~ ^{know} Niimi's intentional conduct, Dolores M. Santos suffered from severe depression, post-traumatic stress disorder, low self-esteem, low self confidence, and an inability to work, and was at a high risk ~~for suicidal behavior,~~ thus the Commission's award of compensatory and punitive damages is fully supported by the record.

Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED THAT THE CIVIL RIGHTS COMMISSION'S DECISION BE AFFIRMED.

DATED: Hilo, Hawaii

AUG 31 1994

RIKI MAY AMANO

Judge of the Above-Entitled Court

